IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

ST.Rev..No. 200 of 2004

TA.415/2000 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD

PETITIONER/APPELLANT/ASSESSEE

M/S.SOWBHAGYA TRADERS,
PANSION STREET,
PALAKKAD.

BY ADV. SRI.T.M.SREEDHARAN

RESPONDENT: RESPONDENT: REVENUE:

STATE OF KERALA,
REP. BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

S.T. REV. NO. 200 OF 2004

Dated this the 11th October, 2007

O R D E R

H.L.DATTU, C.J.

Petitioner, M/s.Sowbhagya Traders, is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 ('KGST Act' for short). Petitioner was carrying on business in arrack. The petitioner was a contractor for A.S.Group No.V/93-94 of Kuzhalmannam Range. Petitioner had a licence under the provisions of the Abkari Act for the assessment year 1993-94.

2. Petitioner did not obtain any licence under the Abkari Act for the assessment year 1994-95.

3. At the end of the assessment year 1993-94, petitioner had a closing stock of rectified spirit. Since he did not have any licence to do business in rectified spirit/arrack etc., he sought permission from the Excise Authorities for transferring the closing stock that was available with him to another licencee, who had licence to do business under the provisions of the Abkari Act. The request made by the assessee was granted by the Assistant Excise Commissioner by its order dated 4th April, 1994. In that, the Excise Authority has stated as under:

> "Therefore, sanction is accorded to S/Sri.P.N.Shobhanan and E.A.Sundaran, Contractors of A.S.Group No.V/93-94 of Kuzhalmannam Range to redirect the consignment arrived as per I.P.No.597/93-94 dated 9.2.94 (Revalidated up to 31.3.94) to the Godown of A.S.Group No.II/94-95, Building No.18/621, Thottingal, West Yakkara, Palakkad owned by Sri.A.K.Vasudevan.
>
> To carry out the above direction the validity of the I.P.No.597/93-94 dated 9.2.94 – revalidated later up to 31.3.94 is again extended up to 6.4.94."

4. The assessing authority under the provisions of the KGST Act, has completed the assessments in the petitioner's case for the assessment year 1994-95 and in that, has quantified the tax liability of the petitioner on a taxable turnover of

Rs.8,95,350/-; this is inclusive of profit margin. Accordingly, had quantified the tax payable by the petitioner in a sum of Rs.89,535.00.

5. Aggrieved by the said quantification made by the assessing authority, the petitioner was before the First Appellate Authority, who by its order dated 30th April, 1998, has allowed the assessee's appeal and thereby has set aside the order passed by the assessing authority.

6. The State, being aggrieved by the aforesaid order passed by the First Appellate Authority, had carried the matter in appeal before the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench, Palakkad in T.A.No.415 of 2000. The Tribunal, by its well considered order, has allowed the State's appeal and further, has set aside the order passed by the First Appellate Authority. Aggrieved by the order passed by the Tribunal, the assessee is before us in this Sales Tax Revision, filed under Section 41 of the KGST Act.

7. The assessee has raised the following questions of law for our consideration and decision. They are as under:

"Whether on the facts and in the circumstances of the case:-

i) The Appellate Tribunal is justified in sustaining the assessment for 1994-95 (Annexure-B)?

ii) Is not the order of the Appellate Tribunal arbitrary, illegal and unsustainable in the light of the fact that the petitioner did not carry on any business nor was it licensed to sell rectified spirit during 1994-95?

iii) The order of the Appellate Tribunal legal, valid and sustainable in law in regard to levy of sales tax and surcharge, when the petitioner was paying tax at compounded rate during 1993-94 and the transferee M/s.A.K.Vasudevan was also paying tax at compounded rate for 1994-95?"

8. Sri.T.M.Sreedharan, learned counsel appearing for the assessee, would

submit that the assessee had not carried out any business during the assessment year 1994-95 since, the assessee did not have the licence under the provisions of the Abkari Act and, therefore, the assessing authority was not justified in computing the tax liability of the assessee for the assessment year 1994-95, on the transfer of the closing stock of rectified spirit of the assessment year 1993-94. Learned counsel would further submit that the assessing authority was not justified in including the profit element to the total turnover of the assessee since the petitioner had not carried out any business during the relevant assessment year and lastly, it is stated that the petitioner had opted for payment of tax liability under the provisions of the KGST Act by obtaining permission to pay tax under the compounding scheme and, therefore, the assessing authority was not justified in computing the tax liability of the assessee under Section 5 (1) of the Act.

9. The last two contentions canvassed by the learned counsel for the petitioner does not find any place in the order passed by the Tribunal. What is not urged and argued before the Tribunal cannot be urged and argued for the first time before this Court in the Sales Tax Revision. Therefore, we do not entertain the last two grounds urged by the learned counsel, Sri.T.M.Sreedharan, at the time of hearing of the Sales Tax Revision.

10. During the excise year 1993-94, the assessee was a contractor and had licence to deal in rectified spirit/arrack etc. For the subsequent year 1994-95, the assessee did not have the licence to do business in rectified spirit/arrack. At the end of the year 1993-94, the assessee had the closing stock of rectified spirit. With the permission of the Excise Authorities, that closing stock came to be transferred by the assessee to another excise contractor, who had the licence to do business during the

assessment year 1994-95.

11. Petitioner is a dealer and a businessman, who would not have transferred the rectified spirit to another concern without accepting the sale value of rectified spirit. That has been noticed by the Tribunal in its order while disposing of the State's appeal.

12. The turnover tax is payable on the first sale of the rectified spirit/arrack by a dealer registered under the provisions of the KGST Act. In the instant case, though the petitioner claims that he has transferred the closing stock to yet another dealer, the said contention cannot be accepted by us, since, the petitioner could not have transferred an excisable commodity without accepting the sale price of the said commodity. Keeping all these aspects of the matter in view, the Tribunal, in our opinion, has rightly reversed the findings and conclusions reached by the First Appellate Authority. Therefore, in our opinion, the Tribunal has not committed any error whatsoever, which would call for our interference in this Sales Tax Revision.

13. Therefore, in our opinion, in view of the above discussion, the questions of law framed by the assessee require to be answered against the assessee and in favour of the Revenue.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/